

**Letter of Findings: 65-20191333P
Indiana Oversize/Overweight Proposed Assessment
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for two oversize/overweight civil penalties for violating a permit it should have obtained from the Department and, in addition, for failing to obtain a permit. The Department determined that Motor Carrier should only be assessed a penalty for not obtaining a permit and not for violating the terms of the permit. Therefore, Motor Carrier's protest is sustained in part and denied in part.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-4-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Motor Carrier protests the assessment of two oversize/overweight civil penalties.

STATEMENT OF FACTS

Motor Carrier is based outside of Indiana. On June 15, 2018, Motor Carrier's commercial motor vehicle was cited by the Indiana State Police ("ISP") for an oversize violation. As a result, the Department issued Motor Carrier a proposed assessment for two oversize/overweight ("OS/OW") civil penalties. Motor Carrier disagreed with the assessment of penalties and submitted a protest to that effect. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Motor Carrier protests the imposition of two civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Motor Carrier was transporting a load in excess of the gross weight allowed under IC § 9-20-4-1. Motor Carrier argued that the vehicle in question was a "farm truck with farm registration" and the cargo in question was less than 10 percent over the statutory limit, which, according to Motor Carrier, allows a "10 percent overage."

As a threshold issue, it is Motor Carrier's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, in relevant part, "an owner of a vehicle . . . may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the

limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that "a person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." According to IC § 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Motor Carrier a Permit Violation Civil Penalty and a No Permit Civil Penalty. According to the ISP report, Motor Carrier transported cargo in excess of the gross amount allowed under IC § 9-20-4-1. The Department offers an oversize permit that allows a carrier to transport more than the statutory limit. Department records, however, show that Motor Carrier did not have a permit at the time of the traffic stop in question.

Motor Carrier argued that because the cargo in question was a farm commodity and less than 10 percent more than the statutory limit, the ISP erred in citing Motor Carrier for transporting cargo over the statutory weight.

Motor Carrier is presumably referring to IC § 9-20-4-1(a)(1), which exempts farm commodities that do not exceed the statutory gross weight limit by more than 10 percent from being assessed a civil penalty for being over gross allowable weight. This section, effectively, increases the statutory gross allowable weight for farm commodities from 80,000 pounds to 88,000 pounds. This farm commodity increase, however, is not universal, as IC § 9-20-4-2(b)(2) provides that "[t]he exemptions in subsection (a) do not apply to . . . [a] vehicle operated on any part of an interstate highway." In this case, Motor Carrier was operating the vehicle in question on Interstate Highway 69 when stopped by ISP. It follows that the statutory increase does not apply to the cargo in question.

It is, therefore, appropriate for Motor Carrier to receive a No Permit Civil Penalty. However, because Motor Carrier did not have a permit at the time of the traffic stop, Motor Carrier should not have been assessed a Permit Violation Civil Penalty. Based on this review, the Department will generate an updated bill for Motor Carrier.

FINDING

Motor Carrier's protest is sustained in part and denied in part.

January 2, 2020

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